

DA 97-539

DISP

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Powhatan and Goochland,
Virginia)¹

MM Docket No. 96-167
RM-8843
RM-8899

Released: March 21, 1997

1. At the request of David Layne ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 11 FCC Rcd 9173 (1996), proposing the allotment of the allotment of Channel 263A to Powhatan, Virginia, as the community's first local aural transmission service. Petitioner filed comments and reply comments reaffirming his intention to apply for Channel 263A if allotted to Powhatan. All Cultural Communications, Inc. ("All Cultural") filed a counterproposal² and reply comments.

2. In its counterproposal, All Cultural requests the allotment of Channel 263A to Goochland, Virginia. It states that Goochland, also known as Goochland Courthouse, is the county seat of Goochland County. All Cultural claims that Goochland is also the situs of the Goochland County Chamber of Commerce, which has a membership of about 250 professional, business and other organizational groups. It notes that some 46 businesses and professions are located in Goochland proper. These Goochland businesses and professions include a newspaper, (The Goochland Gazette), and other organizations which identify themselves specifically with Goochland such as: Goochland Exxon, Goochland Family Practice, Inc., Goochland Fellowship, Goochland Glass, Inc., Goochland Print & Sing Shop, Goochlander, Goochland Construction Company, Inc. and Town & Country Goochland Market. All Cultural states there are five public schools and a community college in Goochland County. It submits that Goochland also has its own post office, zip code and a number of civil and social organizations which identify themselves with the community.

¹ The community of Goochland, Virginia, has been added to the caption.

² All Cultural's counterproposal was placed on Public Notice on October 25, 1996, Report No. 2161.

3. In the Notice, petitioner was requested to provide evidence to demonstrate that Powhatan is incorporated, or that it is a community for allotment purposes. In response, petitioner states that Powhatan is an unincorporated community of 900 persons, who do not have a local radio service. He submits that Powhatan is the county seat of Powhatan County, making it a center of judicial functions. Petitioner states that the community enjoys the services of many churches and is the headquarters for numerous clubs and organizations. Those specifically established for Powhatan include: Huguenot Ruritan Club, Chamber of Commerce, Eastern Star, Jaycees, 4-H Clubs, Moose Lodge, Fair Association, fire department, VFW, and Junior Woman's Club. Petitioner notes that Powhatan has all the typical community services one would expect to find in a community including a post office, newspaper, medical services, library, trash removal, rescue squad, voter registration, youth services and a Planning and Development Office. Petitioner states that Powhatan boasts of a full representation in public schools, including; an elementary school, middle school and a high school, all located in the community of Powhatan. Petitioner argues that Powhatan, while an unincorporated community, has the social, economic and cultural characteristics that would be expected to be found in a community for allotment purposes. Finally, petitioner states that All Cultural has failed to provide any evidence that the utilization of a channel in Goochland would better serve the public interest than a channel in Powhatan.

4. All Cultural filed reply comments stating that unlike Powhatan, Goochland is a geographically identifiable population grouping and constitutes a community within the meaning of Section 307(b) of the Communications Act of 1934, as amended. In support of this, All Cultural submits a map depicting the boundaries of Goochland village, as well as written testimony from Robert A. Hammond ("Hammond"), the Assistant County Administrator/County Planner for Goochland County.³ Hammond submits that the estimated population of Goochland is 650 as of November 1996, excluding the inmates at the Goochland Correctional Center, which has a current resident population of approximately 700 persons. All Cultural opposes petitioner's proposal to allot a channel at Powhatan, noting that petitioner's population estimate is unreliable since he has not provided evidence to warrant the acceptance of his estimate. In any event, All Cultural argues if petitioner's estimate of a 900 persons is accepted, the total resident population (1,350) of Goochland is larger than Powhatan's estimated population, therefore Channel 263A should be allotted to Goochland pursuant to Section 307(b) of Communications Act.

5. After careful consideration of the proposals, we find that petitioner and All Cultural have persuasively shown, in light of Powhatan's and Goochland's lack of inclusion in the U.S. Census, that both are communities for allotment purposes. All Cultural has provided information and Hammond's testimony as to the population and boundaries of Goochland. Both communities have a local newspaper, post office, a number of religious and public safety institutions, social and civil organizations, and businesses. While there appears to be no local government at either

³ Hammond states as part of his regular duties he is responsible for estimating the population growth in Goochland County since the 1990 U.S. Census. He submits that the Goochland County administrative offices are located in the village of Goochland, also known as the Goochland Courthouse and since it is the location of his workplace, he is particularly familiar with Goochland village and has made a careful estimate of its population as of November 1996.

community, both serve as the county seats for their respective counties.

6. In an effort to provide each community with its first local service, the staff performed a search to determine if alternate channels were available. However, neither the proponents nor the Commission's staff has been able to identify an alternate channel for allotment to either community. Therefore we must make a decision based on the guidelines set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982), which are:

- (1) First full-time aural service;
 - (2) Second full-time aural service;
 - (3) First local service; and
 - (4) Other public interest matters.
- [Co-equal weight given to priorities (2) and (3)]

The allotment could provide each community with its first local aural transmission service. Since the proposals would provide a first local transmission service to each, thus fulfilling priority (3), we believe it is appropriate to base our determination on which proposal should prevail under priority (4) of the allotment criteria, other public interest matters. This priority permits the Commission to compare the availability of reception services and relative populations of each community. In this regard, both communities are well served with Powhatan receiving twelve aural services and Goochland receiving 10. The 1995 edition of the Rand McNally Commercial Atlas indicates that Powhatan has a population of 610 persons while Goochland is credited with 600 persons. Both proponents argue that the population of their respective communities is greater than listed in the Atlas, petitioner stating Powhatan has 900 residents while All Cultural has submitted Hammond's declaration claiming Goochland has a population of 650 persons, excluding the 700 inmates at the Goochland Correctional Center. While the Commission relies on population figures published by the U.S. Census, we will accept figures from other sources such as state or county officials. In this case, we note that petitioner has failed to supply any proof or evidence to substantiate his estimate of Powhatan's population, while All Cultural has submitted Hammond's statement estimating Goochland's total population as comprising of 1,350 persons. Based on the record before us, we will grant the allotment of Channel 263A to Goochland since it is the larger of the two communities. See Athens and Atlanta, Illinois, 11 FCC Rcd 3445 (1996) and Blanchard, Louisiana and Stephens, Arkansas, 8 FCC Rcd 7083 (1993). See also, Obion and Tiptonville, Tennessee, 7 FCC Rcd 2644 (1992).

Technical Summary

7. Channel 263A can be allotted to Goochland in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.5 kilometers (0.9 miles) northwest in order to avoid short-spacing conflicts with the licensed operation of Stations WSOJ(FM), Channel 262A, Petersburg, Virginia, and WCMS(FM), Channel 263B, Norfolk,

Virginia.⁴

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective May 5, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Goochland, Virginia	263A

9. The window period for filing applications for Channel 263A at Goochland, Virginia, will open on May 5, 1997, and close on June 5, 1997.

10. IT IS FURTHER ORDERED, That the petition for rule making (RM-8843) filed by David Layne to allot Channel 263A to Powhatan, Virginia, IS DENIED.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

⁴ The coordinates for Channel 263A at Goochland are 37-41-20 NL and 77-54-03 WL.